STATE OF MICHIGAN

COURT OF APPEALS

In re M.A. MARTINEZ, Minor.	UNPUBLISHED October 21, 2014 Nos. 321035 & 321036 Isabella Circuit Court Family Division LC No. 11-000084-NA
In re C.D. MARTINEZ, Minor.	No. 321138 Isabella Circuit Court Family Division LC No. 11-000017-NA

Before: FITZGERALD, P.J., and WILDER and OWENS, JJ.

PER CURIAM.

In these consolidated appeals, respondent-father appeals as of right in Docket No. 321035, an order terminating his parental rights to the minor child M.A. pursuant to MCL 712A.19b(3)(c)(*i*) (conditions of adjudication continue to exist) and (g) (failure to provide proper care and custody). In Docket Nos. 321036 and 321138, respondent-mother appeals as of right, from two separate orders terminating her parental rights to the minor children, M.A. and C.D., pursuant to MCL 712A.19b(3)(c)(*i*) and (g). We affirm in all appeals.

I. STATUTORY GROUNDS FOR TERMINATION

Respondents argue that the trial court improperly found statutory grounds to terminate their parental rights to the minor children. "In order to terminate parental rights, the trial court must find by clear and convincing evidence that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met." *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). We review for clear error the trial court's finding that a statutory ground has been established. *Id*. "A finding is 'clearly erroneous' if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made." *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009). "We give deference to the trial court's special opportunity to judge the credibility of the witnesses." *Id.*

The trial court terminated respondent-mother's parental rights to C.A. and M.A. and respondent-father's parental rights to M.A. pursuant to MCL 712A.19b(3)(c)(*i*) and (g), which provide,

> (3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:
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> * * *
>
> (c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds . . .
>
> (*i*) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.
>
> * * *
>
> (g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

A. DOCKET NO. 321035

With respect to MCL 712A.19b(3)(c)(*i*), the condition that led to adjudication for respondent-father was the fact that he was unable to provide proper care and custody to M.A. because he was incarcerated at the time of the adjudication and had a lengthy criminal history, which included three domestic assault convictions. The record shows that respondent-father was still unable to provide proper care and custody at the time of termination and there was no reasonable likelihood that he would be able to rectify this condition within a reasonable time considering the child's age. Respondent-father was in jail for domestically assaulting respondent-mother when M.A. was born. Although he was later released, he only saw M.A. a few times and did not participate in reunification services during prior proceedings initiated in 2011. When the current proceedings began in January 2013, respondent-father was in prison for violating parole and remained imprisoned for most of the proceedings. During the proceedings, respondent-father only sent M.A. one card, and he failed to ask how M.A. was doing in foster care. Although respondent-father was free from incarceration at the time of termination, he lacked employment and independent housing, and he only seemed interested in acquiring custody of M.A. so that he would have a reason to "turn" his life around, not because it was in the child's best interests.

Respondent-father argues that he should be provided with an additional three to six months to locate independent housing and find employment, given that he was recently released from incarceration. However, given that respondent-father had been in and out of jail and prison for a majority of M.A.'s young life, and had made no progress during prior proceedings, there is no indication on the record that he would be able to remain free from incarceration and provide

proper care for M.A. within a reasonable time. The child was over two and a half years old at the time of termination, did not have a relationship with respondent-father, and required permanency within the near future. Over the course of the proceedings, the record shows respondent-father failed to accomplish any meaningful change in the conditions that led to adjudication. See *In re Williams*, 286 Mich App 253, 272; 779 NW2d 286 (2009). Therefore, the trial court did not clearly by finding statutory grounds to terminate respondent-father's rights to M.A. pursuant to MCL 712A.19b(3)(c)(*i*). For these same reasons, we find that the trial court also did not err by finding statutory grounds for termination pursuant to MCL 712A.19b(3)(g).

B. DOCKET NOS. 321036 AND 321138

With respect to MCL 712A.19b(3)(c)(*i*), the condition that led to adjudication for respondent-mother was her history of child abuse. At the time of termination, respondent-mother failed to make progress toward rectifying her abuse issues, and there was no reasonable likelihood that she would be able to rectify this condition within a reasonable time considering the children's age. Respondent-mother was substantiated for abuse against another one of her children and C.D. in 2005, 2007, and 2011, and was provided services through the Department of Human Services (DHS). Nevertheless, respondent-mother was subsequently convicted of fourth-degree child abuse against C.D. in January 2013. While respondent-mother was in jail for eight months for that conviction, she completed two services related to stress management, but she was unable to articulate any stress management techniques following those services. Respondent-mother did not accept responsibility for the children entering care, and she did not admit to abusing C.D. despite the fact that he was diagnosed with post-traumatic stress disorder (PTSD), depression, and reactive attachment disorder (RAD) following the last incident of abuse. Rather, respondent-mother asserted that C.D. misconstrued the events that took place, and repeatedly continued to minimize the abuse that C.D. endured while in her care. She also did not take responsibility for her role in C.D.'s mental health issues. At the time of termination, respondent-mother had not seen the children for over 13 months. Because of C.D.'s intense fear of respondent-mother, his therapist recommended that he not have contact with her. The therapist also recommended that M.A. not have contact with respondent-mother because it would only confuse C.D. and strengthen his belief that respondent-mother thought of M.A. as her favorite child, given she treated him differently. Although there is no indication on the record that M.A. suffered abuse while in respondent-mother's care, "evidence of mistreatment of one child is probative of the treatment of other children of the party." *Matter of Jackson*, 199 Mich App 22, 26; 501 NW2d 182 (1993). Further, one of respondent-mother's therapists believed that she was able to act appropriately with infants, but not with older children. The therapist was concerned that M.A. would be at risk of future abuse in respondent-mother's care as he grew older.

Respondent-mother argues that she should have been given additional time to participate in services. However, there is no indication on the record that respondent-mother would be able rectify her abuse issues and be able to provide proper care and custody for the children considering their age. Testimony supported that the children were at risk of future abuse in respondent-mother's care. At the time of termination, it was believed that respondent-mother required two to five years of therapy. Given her failure to take responsibility during the proceedings and the fact that she failed to benefit from the counseling that she was provided during the previous child protective proceedings, there is no reason to believe that she would

benefit from additional counseling in the future. M.A. was over two and a half years old and C.D. was eight years old, and they both required permanency. The record shows the confusion the children endured wondering who they were going to reside with long-term. Given mother's history of abusing children in her care and her lack of benefit from services in the past, the record shows respondent-mother failed to accomplish any meaningful change in the conditions that led to adjudication. See *In re Williams*, 286 Mich App at 272. Therefore, the trial court did not clearly err by finding statutory grounds to terminate respondent-mother's rights to M.A. and C.D. pursuant to MCL 712A.19b(3)(c)(*i*). For these same reasons, we find that the trial court also did not err by finding statutory grounds for termination pursuant to MCL 712A.19b(3)(g).

II. REUNIFICATION EFFORTS

Respondents also argue that the DHS did not make reasonable efforts to facilitate reunification. Pursuant to MCL 712A.19a(2), if a child remains in foster care and parental rights to the child have not yet been terminated, "[r]easonable efforts to reunify the child and family must be made." "While the DHS has a responsibility to expend reasonable efforts to provide services to secure reunification, there exists a commensurate responsibility on the part of respondents to participate in the services that are offered." *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012). Because neither respondent-father nor respondent-mother raised an objection to the adequacy of the services provided, our review of this issue is for plain error affecting substantial rights. *Id.*; *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008).

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Respondent-father argues that reasonable efforts were not made because he was not provided with services or a psychological evaluation while he was in prison. However, the record supports that classes were available through the prison and that respondent-father took advantage of them upon the direction of the DHS. Any additional services would have needed to occur outside of prison, which was impossible while respondent-father was incarcerated. Additionally, there is no evidence on the record to support that respondent-father could have submitted to a psychological evaluation while he was in prison. In fact, a caseworker did inquire into a psychological evaluation for respondent-father, but it was not available given his incarceration and the prison procedures. Therefore, respondent-father is unable to show plain error affecting substantial rights with regard to the DHS's reunification efforts.

B. DOCKET NOS. 321036 AND 321138

Respondent-mother argues that reasonable efforts were not made because she was not provided with services to address her PTSD. However, the record establishes that respondent-mother was receiving counseling to address her history of trauma, and she was not diagnosed with PTSD when she was evaluated in April 2013, during the current proceedings. Although she had been diagnosed with PTSD in 2011, that evaluation was over three years old and no longer considered reliable given her more-recent evaluation. Additionally, respondent-mother testified on February 25, 2014 that she was "recently" informed that she did not suffer from the disorder.

With respect to respondent-mother's argument that reasonable efforts were not made because she was not provided joint counseling with C.D., the record establishes that she was not

provided this service because C.D. was afraid of her, did not wish to see her, and there were concerns that being in contact with respondent-mother would cause C.D. to significantly regress. It was respondent-mother's abuse of C.D. that prevented joint counseling—not the DHS's failure to make reasonable efforts towards reunification. Therefore, respondent-mother has failed to establish plain error affecting substantial rights with regard to the DHS's reunification efforts.

III. BEST INTERESTS

Finally, respondents argue that termination was not in the children's best interests. "Once a statutory ground for termination has been proven, the trial court must find that termination is in the child's best interests before it can terminate parental rights." *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012). We review a trial court's finding that termination is in a minor child's best interests for clear error. *In re HRC*, 286 Mich App at 459.

Whether termination of parental rights is in the child's best interests must by proved by a preponderance of the evidence. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). "In deciding whether termination is in the child's best interests, the court may consider the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home." *In re Olive/Metts*, 297 Mich App at 42 (internal citations omitted).

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Respondent-father argues that the trial court erred by finding that he and M.A. did not have a bond. However, the record clearly supports that M.A. was not bonded to respondent-father. At the time of termination, M.A. did not seem to even remember respondent-father, and he referred to his foster parents as "mom" and "dad." The record supports that M.A. was happy and thriving in the home of the foster parents, who wished to adopt him and C.D. See *In re VanDalen*, 293 Mich App at 141 (finding that termination was in the children's best interests where the children were thriving with their foster parents). Further, respondent-father had spent most of M.A.'s young life incarcerated and did not ask about his well-being. During the proceedings, he only sent M.A. one card and saw him a few times. Based on this record, it clear respondent-father did not have an established relationship with M.A. See *In re Jones*, 286 Mich App 126, 129-130; 777 NW2d 728 (2009) (finding that termination was in the child's best interests where the child was very young and the respondent had not established a relationship with the child).

Respondent-father seeks to challenge the trial court's determination that respondent-mother's February 25, 2014 testimony concerning the amount of times that respondent-father saw M.A. before he was incarcerated in December 2011 was not credible. Because this Court gives "deference to the trial court's special opportunity to judge the credibility of the witnesses," we decline to interfere with the trial court's credibility determinations. *In re HRC*, 286 Mich App at 459. Therefore, the trial court did not clearly err by finding that termination of respondent-father's parental rights was in M.A.'s best interests.

B. DOCKET NOS. 321036 AND 321138

Respondent-mother argues that, because the record did not support that a statutory ground for termination had been met, it was unnecessary for the trial court to decide whether termination was in the children's best interests. However, given that we determined that the record supported termination of respondent-mother's parental rights under MCL 712A.19b(3)(c)(*i*) and (g), we conclude that this argument is without merit.

Finally, in respondent-mother's questions presented, she raises the issue of whether the trial court properly determined that a preponderance of the evidence supported that termination of her parental rights was in the children's best interests. However, because she fails to brief the merits of the allegation of error and fails to cite authority to support this assertion, the argument is abandoned. *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999). Nevertheless, given respondent-mother's inability to take responsibility for her actions and rectify her abuse issues, the lack of a parent-child bond with the children, the children's bond with their foster parents, and the children's need to stability and permanency, we find that the record overwhelmingly supports that termination of respondent-mother's parental rights was in the best interests of the children, M.A. and C.D.

IV. CONCLUSION

In Docket No. 321035, we affirm the trial court's order terminating respondent-father's parental rights to the minor child, M.A. In Docket Nos. 321036 and 321138, we affirm the trial court's orders terminating respondent-mother's parental rights to the minor children, M.A. and C.D.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Kurtis T. Wilder
/s/ Donald S. Owens